

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 585

Introduced by Senator Kehoe

February 18, 2005

An act to amend Section 6389 of the Family Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 585, as amended, Kehoe. Protective orders: firearms.

~~Existing law provides that the form providing notice that a protective order has been requested or granted notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms. Existing law also provides that the court shall order that relinquishment, as specified, within 24 hours of being served the order, and require the respondent to notify the court of the relinquishment within 72 hours.~~

~~This bill would revise the application for a protective order form to include a space for the petitioner to identify all firearms known to be in the possession of the respondent, the location of the firearms, the basis for the petitioner's knowledge regarding the existence and location of the firearms, and why the respondent's possession of firearms subjects the petitioner to an increased risk of harm. The bill would also require the respondent to notify the court of the relinquishment within 48 rather than 72 hours, and would require the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in that person's control to local law enforcement officials or a licensed gun dealer, within 24 hours of~~

~~being served with the order. The bill would authorize the court to issue a search warrant for the immediate search and seizure of any firearm in the respondent's possession upon a judicial finding of probable cause that the respondent's possession of firearms creates an increased risk of harm to the petitioner and that specified firearms will be found a specified location. The bill would also set forth additional procedures for surrendering a firearm to a peace officer.~~

Existing law prohibits a person subject to a protective order, as defined, from owning, possessing, purchasing, or receiving a firearm while that protective order is in effect and makes a willful and knowing violation of a protective order a crime. Existing law also requires the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement officials, or by selling the firearm to a licensed gun dealer. Under existing law, a person ordered to relinquish any firearm is required to file with the court a receipt showing the firearm was surrendered or sold within 72 hours after receiving the order.

This bill would instead require the person ordered to relinquish a firearm to immediately surrender the firearm in a safe manner, upon request of any law enforcement officer, or within 24 hours as specified above. The bill also would require the person to file a receipt with the court within 48 hours after being served with the order and would provide that the failure to timely file a receipt constitutes a violation of the protective order. Because a willful and knowing violation of a protective order is a crime, the bill would expand the scope of an existing crime, resulting in a state-mandated local program.

The bill would also require application forms for protective orders adopted by the Judicial Council and approved by the Department of Justice to be amended to require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent. The bill would additionally include recommendations for written policies and standards for law enforcement officers who request relinquishment of firearms and would require the Attorney General's office, on or before December 31, 2007, to work with local law enforcement to develop and disseminate model policies and standards.

By requiring new duties of law enforcement, the bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6389 of the Family Code is amended to
- 2 read:
- 3 6389. (a) A person subject to a protective order, as defined in
- 4 Section 6218, shall not own, possess, purchase, or receive a
- 5 firearm while that protective order is in effect. Every person who
- 6 owns, possesses, purchases or receives, or attempts to purchase
- 7 or receive a firearm while the protective order is in effect is
- 8 punishable pursuant to subdivision (g) of Section 12021 of the
- 9 Penal Code.
- 10 (b) ~~(1) Each application for a protective order shall include a~~
- 11 ~~space for the petitioner to identify all firearms known to be in the~~
- 12 ~~possession of the respondent, the location of the firearms, the~~
- 13 ~~basis for the petitioner's knowledge regarding the existence and~~
- 14 ~~location of the firearms, and why the respondent's possession of~~
- 15 ~~firearms subjects the petitioner to an increased risk of harm.~~

1 ~~(2)~~ On all forms providing notice that a protective order has
2 been requested or granted, the Judicial Council, shall include a
3 notice that, upon service of the order, the respondent shall be
4 ordered to relinquish possession or control of any firearms and
5 not to purchase or receive or attempt to purchase or receive any
6 firearms for a period not to exceed the duration of the restraining
7 order.

8 (c) (1) Upon issuance of a protective order, as defined in
9 Section 6218, the court shall order the respondent to relinquish
10 any firearm ~~in that person's~~ *the respondent's immediate*
11 possession or control ~~pursuant to this subdivision:~~

12 ~~(A) The court shall order that the respondent surrender the~~
13 ~~firearm to the control of local law enforcement officials or sell~~
14 ~~the firearm to a licensed gun dealer, as specified in Section~~
15 ~~12071 of the Penal Code, within 24 hours of being served with~~
16 ~~the order.~~

17 ~~(B) A judge may issue a search warrant for the immediate~~
18 ~~search and seizure of any firearm in the possession of the~~
19 ~~respondent upon a judicial finding of probable cause that the~~
20 ~~respondent's possession of firearms creates an increased risk of~~
21 ~~harm to the petitioner, and that specified firearms will be found~~
22 ~~in a specified location.~~

23 ~~(C) In the event that a subordinate judicial officer reviews the~~
24 ~~petition, that judicial officer may refer the matter to a judge for~~
25 ~~review and possible issuance of a warrant, as provided for in~~
26 ~~paragraph (2).~~

27 ~~(2) A person ordered to relinquish any firearm pursuant to this~~
28 ~~subdivision shall, within 48 hours after receiving the order, file~~
29 ~~with the court a receipt showing the firearm was surrendered to~~
30 ~~the local law enforcement agency or sold to a licensed gun~~
31 ~~dealer.~~

32 ~~or subject to the respondent's immediate possession or control.~~

33 ~~(2) The relinquishment ordered pursuant to paragraph (1)~~
34 ~~shall occur by immediately surrendering the firearm in a safe~~
35 ~~manner, upon request of any law enforcement officer, to the~~
36 ~~control of the officer, after being served with the protective~~
37 ~~order. Alternatively, if no request is made by a law enforcement~~
38 ~~officer, the relinquishment shall occur within 24 hours of being~~
39 ~~served with the order, by either surrendering the firearm in a~~
40 ~~safe manner to the control of local law enforcement officials, or~~

1 *by selling the firearm to a licensed gun dealer, as specified in*
2 *Section 12071 of the Penal Code. The law enforcement officer or*
3 *licensed gun dealer taking possession of the firearm pursuant to*
4 *this subdivision shall issue a receipt to the person relinquishing*
5 *the firearm at the time of relinquishment. A person ordered to*
6 *relinquish any firearm pursuant to this subdivision shall file with*
7 *the court that issued the protective order, within 48 hours after*
8 *being served with the order, the receipt showing the firearm was*
9 *surrendered to a local law enforcement agency or sold to a*
10 *licensed gun dealer. Failure to timely file a receipt shall*
11 *constitute a violation of the protective order.*

12 *(3) The application forms for protective orders adopted by the*
13 *Judicial Council and approved by the Department of Justice*
14 *shall be amended to require the petitioner to describe the*
15 *number, types, and locations of any firearms presently known by*
16 *the petitioner to be possessed or controlled by the respondent.*

17 *(4) It is recommended that every law enforcement agency in*
18 *the state develop, adopt, and implement written policies and*
19 *standards for law enforcement officers who request immediate*
20 *relinquishment of firearms. On or before December 31, 2007, the*
21 *Attorney General's office shall work with local law enforcement*
22 *to develop and disseminate model policies and standards to all*
23 *law enforcement agencies in the state, as recommended in this*
24 *subdivision.*

25 *(d) If the respondent declines to relinquish possession of any*
26 *firearm based on the assertion of the right against*
27 *self-incrimination, as provided by the Fifth Amendment to the*
28 *United States Constitution and Section 15 of Article I of the*
29 *California Constitution, the court may grant use immunity for the*
30 *act of relinquishing the firearm required under this section.*

31 *(e) A local law enforcement agency may charge the*
32 *respondent a fee for the storage of any firearm pursuant to this*
33 *section. This fee shall not exceed the actual cost incurred by the*
34 *local law enforcement agency for the storage of the firearm. For*
35 *purposes of this subdivision, "actual cost" means expenses*
36 *directly related to taking possession of a firearm, storing the*
37 *firearm, and surrendering possession of the firearm to a licensed*
38 *dealer as defined in Section 12071 of the Penal Code or to the*
39 *respondent.*

1 (f) The restraining order requiring a person to relinquish a
2 firearm pursuant to subdivision (c) shall state on its face that the
3 respondent is prohibited from owning, possessing, purchasing, or
4 receiving a firearm while the protective order is in effect and that
5 the firearm shall be relinquished to the local law enforcement
6 agency for that jurisdiction or sold to a licensed gun dealer, and
7 that proof of surrender or sale shall be filed with the court within
8 a specified period of receipt of the order. The order shall also
9 state on its face the expiration date for relinquishment. Nothing
10 in this section shall limit a respondent's right under existing law
11 to petition the court at a later date for modification of the order.

12 (g) The restraining order requiring a person to relinquish a
13 firearm pursuant to subdivision (c) shall prohibit the person from
14 possessing or controlling any firearm for the duration of the
15 order. At the expiration of the order, the local law enforcement
16 agency shall return possession of any surrendered firearm to the
17 respondent, within five days after the expiration of the
18 relinquishment order, unless the local law enforcement agency
19 determines that (1) the firearm has been stolen, (2) the
20 respondent is prohibited from possessing a firearm because the
21 respondent is in any prohibited class for the possession of
22 firearms, as defined in Sections 12021 and 12021.1 of the Penal
23 Code and Sections 8100 and 8103 of the Welfare and Institutions
24 Code, or (3) another successive restraining order is used against
25 the respondent under this section. If the local law enforcement
26 agency determines that the respondent is the legal owner of any
27 firearm deposited with the local law enforcement agency and is
28 prohibited from possessing any firearm, the respondent shall be
29 entitled to sell or transfer the firearm to a licensed dealer as
30 defined in Section 12071 of the Penal Code. If the firearm has
31 been stolen, the firearm shall be restored to the lawful owner
32 upon his or her identification of the firearm and proof of
33 ownership.

34 (h) The court may, as part of the relinquishment order, grant
35 an exemption from the relinquishment requirements of this
36 section for a particular firearm if the respondent can show that a
37 particular firearm is necessary as a condition of continued
38 employment and that the current employer is unable to reassign
39 the respondent to another position where a firearm is
40 unnecessary. If an exemption is granted pursuant to this

1 subdivision, the order shall provide that the firearm shall be in
2 the physical possession of the respondent only during scheduled
3 work hours and during travel to and from his or her place of
4 employment. In any case involving a peace officer who as a
5 condition of employment and whose personal safety depends on
6 the ability to carry a firearm, a court may allow the peace officer
7 to continue to carry a firearm, either on duty or off duty, if the
8 court finds by a preponderance of the evidence that the officer
9 does not pose a threat of harm. Prior to making this finding, the
10 court shall require a mandatory psychological evaluation of the
11 peace officer and may require the peace officer to enter into
12 counseling or other remedial treatment program to deal with any
13 propensity for domestic violence.

14 (i) During the period of the relinquishment order, a respondent
15 is entitled to make one sale of all firearms that are in the
16 possession of a local law enforcement agency pursuant to this
17 section. A licensed gun dealer, who presents a local law
18 enforcement agency with a bill of sale indicating that all firearms
19 owned by the respondent that are in the possession of the local
20 law enforcement agency have been sold by the respondent to the
21 licensed gun dealer, shall be given possession of those firearms,
22 at the location where a respondent's firearms are stored, within
23 five days of presenting the local law enforcement agency with a
24 bill of sale.

25 (j) The disposition of any unclaimed property under this
26 section shall be made pursuant to Section 1413 of the Penal
27 Code.

28 (k) The return of a firearm to any person pursuant to
29 subdivision (f) shall not be subject to the requirements of
30 subdivision (d) of Section 12072 of the Penal Code.

31 (l) If the respondent notifies the court that he or she owns a
32 firearm that is not in his or her immediate possession, the court
33 may limit the order to exclude that firearm if the judge is
34 satisfied the respondent is unable to gain access to that firearm
35 while the protective order is in effect.

36 (m) Any respondent to a protective order who violates any
37 order issued pursuant to this section shall be punished under the
38 provisions of subdivision (g) of Section 12021 of the Penal Code.

39 ~~SEC. 2. If the Commission on State Mandates determines that~~
40 ~~this act contains costs mandated by the state, reimbursement to~~

1 ~~local agencies and school districts for those costs shall be made~~
2 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
3 ~~4 of Title 2 of the Government Code.~~

4 *SEC. 2. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution for*
6 *certain costs that may be incurred by a local agency or school*
7 *district because, in that regard, this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the*
9 *penalty for a crime or infraction, within the meaning of Section*
10 *17556 of the Government Code, or changes the definition of a*
11 *crime within the meaning of Section 6 of Article XIII B of the*
12 *California Constitution.*

13 *However, if the Commission on State Mandates determines that*
14 *this act contains other costs mandated by the state,*
15 *reimbursement to local agencies and school districts for those*
16 *costs shall be made pursuant to Part 7 (commencing with Section*
17 *17500) of Division 4 of Title 2 of the Government Code.*